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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Jose Daniel Castillo-Antonio,) Case Number _____
Plaintiff,)
Vs.) CIVIL RIGHTS
Wilibees LLC, individually and dba Wilibees) COMPLAINT FOR INJUNCTIVE RELIEF
Wine & Spirits; Dennis L. Gong, Trustee;) AND DAMAGES: DENIAL OF CIVIL
Raymond K. Lowe, Trustee; and Does 1 to) RIGHTS OF A DISABLED PERSON, IN
50,) VIOLATION OF THE AMERICANS WITH
Defendants.) DISABILITIES ACT OF 1990 AS
) AMENDED, AND VIOLATION OF
) CALIFORNIA'S CIVIL RIGHTS
) STATUTES
) JURY TRIAL REQUESTED

Plaintiff herein complains of defendants herein, and alleges as follows:

JURISDICTION AND VENUE

1. This court has jurisdiction over this matter and these defendants pursuant to 28 USC § 1331
24 for violations of the Americans with Disabilities Act of 1990 (42 USC §12101 et seq.).
25 Pursuant to pendant jurisdiction, attendant and related causes of action, arising from the same
26 facts, action is also brought under California law, including, but not limited to, violations of
27 California Government Code §4450; California Health and Safety Code §19953 et seq., and
28 applicable regulations, including but not limited to California Code of Regulations, Title 24,

1 §19959; and California Civil Code §§ 51, 51.5, 52(a), 52.1, 54, 54.1, and 54.3. During the
 2 periods relevant to this complaint, defendant Wilibees LLC, owned and operated the business
 3 using the name “Wilibees Wine & Spirits” at 309 Lakeville Street, Petaluma, California in this
 4 judicial district. On information and belief, during the periods relevant to this complaint,
 5 defendants Dennis L. Gong, Trustee, and Raymond K. Lowe, Trustee, owned and own the real
 6 property on which this business is operated in this judicial district.

7 2. Venue is proper in this court pursuant to 28 USC §1391(b) and is founded on the fact that the
 8 real property that is the subject of this action is located in this district, and that plaintiff's cause
 9 of action arose in this district.

10 **INTRODUCTION**
 11

12 3. Wilibees Wine & Spirits (the “Business”) is located at 309 Lakeville Street, Petaluma,
 13 California. During the relevant periods in this lawsuit, said business was and is owned and
 14 operated by defendant Wilibees LLC. On information and belief, during the relevant periods in
 15 this lawsuit, the real property was and is owned by defendants Dennis L. Gong, Trustee, and
 16 Raymond K. Lowe, Trustee. The Business is a “public accommodation and business
 17 establishment” subject to California Health and Safety Code §19955 et seq. and California
 18 Civil Code §54. On information and belief, this Business has, since July 1, 1970, undergone
 19 construction and/or “alterations, structural repairs, or additions,” subjecting such facility to
 20 disabled access requirements per Health and Safety Code §19955 to 19959 et seq.
 21 Construction and alterations since July 1, 1982 also subjected these facilities to the
 22 requirements of California’s Title 24, the State Building Code. Further, irrespective of
 23 alteration history, such premises are subject to the “readily achievable” barrier removal
 24 requirements of Title III of the Americans with Disabilities Act of 1990.

25 4. Defendant Wilibees LLC operated and operate the Business, an establishment for services to
 26 the public at which business and location said defendants failed to provide barrier-free access
 27 to said establishment as required under federal and California state law. Further, defendant
 28 failed to provide compliance with the law as follows:

a. Exterior: The primary Business entrance door is without the proper posted international
 symbol of Accessibility in violation of California Building Code (“CBC”), California

1 Title 24 §11B-216.6, 11B-703.7.2.1, and 11B-703.5, and ADAAG (Americans with
2 Disabilities Act Accessibilities Guidelines of the United States Access Board, or
3 “AGAAG”) §4.30.7*(1((Fig. 43(a), and 4.30.6), and without related directional
4 signage. The parking area has some parts that are not in direct visual line-of-sight with
5 the entrance. As a result, Plaintiff had difficulty in finding and using an accessible
6 entrance.

7 b. Exterior: The designated parking space was defective, as follows. These conditions
8 violated the Americans With Disabilities Act (“ADA”), United States Access Board
9 ADA Accessibility Guidelines (“ADAAG”). ADAAG §4.6.3 (1991 standards) (the
10 improper parking space dimensions), and §4.6.6 and §4.1.2(5)(b) (1991 standards) (the
11 lack of proper passenger access aisle that is 96 inches wide and 18 feet long, and a
12 properly painted parking space that is 18 feet long), and similarly, in violation of
13 ADAAG §502.3 (2010 standards). The existing signage on the wall was too low, in
14 violation of ADAAG 4.6.4 (1991 standards) and ADAAG 502.6 (2010 standards).
15 These conditions also violated ADAAG 4.6.4 (1991 standards) and 502.6 and 703.2.1
16 (2010 standards)(lack of proper signage, and parking space not designated “van
17 accessible”). These conditions were also in violation of California Building Code
18 §11B-208 (there was very faded paint to delineate the space itself and the access aisle,
19 and wrong color), 11B-705.1.2.5 (lack of detectable warnings at hazardous vehicle
20 areas), 11B-502.2 (improper vehicle space dimensions), 11B-502.6.4 (faded and
21 incomplete surface identification), 11B-502.6 (“\$250 fine” sign missing; no “van
22 accessible” sign, and other required signage was missing); the space was not “van
23 accessible” (CBC 11B-208.2.4 requires one in every six spaces); and 11B-502.3.3 (“no
24 parking” was not painted in the access aisle). The ramp from the parking space to the
25 entrance was not properly constructed. These conditions caused plaintiff difficulties in
26 finding a safe place to park, safely exit his vehicle, and reach the entrance safely. This
27 caused plaintiff legitimate concern for his own safety as he got out of his vehicle and
28 entered the facility. Also, because of the lack of a proper access aisles, plaintiff was
concerned that another vehicle could pull in and try to park next to him without
realizing that a disabled person was in the process of entering or exiting his vehicle.

5. The above barriers interfered with Plaintiff's access to the facilities at the Business, and continue to deter plaintiff from visiting said facilities, and as a legal result, plaintiff has suffered and suffers violations of his civil rights to full and equal enjoyment of goods, services, facilities and privileges, and has suffered and will suffer embarrassment and humiliation.

FACTUAL ALLEGATIONS

6. Plaintiff is, and at all times relevant to this complaint is, a “physically handicapped person,” a “physically disabled person,” and a “person with a disability” as those terms are used under applicable California law and under applicable federal law, including, but not limited to, Title III of the Americans with Disabilities Act of 1990. (The terms “physically handicapped person,” a “physically disabled person,” and a “person with a disability” will be used interchangeably throughout this complaint.) Plaintiff is severely limited in the use of his legs.
7. Defendants Wilibees LLC, Dennis L. Gong, Trustee, and Raymond K. Lowe, Trustee at all times relevant herein, were and are the owner, operator, lessor, and/or lessee, franchisor and/or franchisee, of public facilities at the Business, known and operated as “Wilibees Wine & Spirits,” located at 309 Lakeville Street, Petaluma, California, subject to California state law requiring full and equal access to public facilities pursuant to California Health and Safety Code §19955 et seq., California Civil Code §§ 51, 51.5, 52(a), 52.1, 54, 54.1, and 54.3, and subject to Title III of the Americans with Disabilities Act of 1990, and to all the other legal requirements referred to in this complaint. Plaintiff does not know the relative responsibilities of the defendants in the operation of the Business facilities complained of herein, and alleges a joint venture and common enterprise by all such defendants.
8. Defendant Wilibees LLC, at all times relevant herein was and is owner, operator, possessor, builder and keeper of the Business called Wilibees Wine & Spirits in the city of Petaluma, California. Plaintiff is informed and believes that each of the defendants herein is the agent, employee, or representative of each of the other defendants, and performed acts and omissions as stated herein within the scope of such agency or employment or representative capacity and is responsible in some manner for the acts and omissions of the other defendants in legally

1 causing the damages complained of herein, and have approved or ratified each of the acts or
2 omissions of each other defendant, as herein described.

3 9. Plaintiff does not know the true names and capacities of defendants Does 1 to 50, their
4 business capacities, their ownership connection to the property and the business, nor their
5 relative responsibilities or relationships among one another in causing the access violations
6 herein complained of, and alleges a joint venture and common enterprise among all
7 defendants. Plaintiff is informed and believes that each of the defendants herein is the agent,
8 ostensible agent, master, servant, employer, employee, representative, franchiser, franchisee,
9 joint venturer, partner, and associate, or such similar capacity, of each of the other defendants,
10 and was at all times acting and performing, or failing to act or perform, with the authorization,
11 consent, permission or ratification of each of the other defendants, and is responsible in some
12 manner for the acts and omissions of the other defendants in legally causing the violations and
13 damages complained of herein, and have approved or ratified each of the acts or omissions of
14 each other defendant, as herein described. Plaintiff will seek leave to amend this Complaint
15 when the true names, capacities, connections and responsibilities of defendants are
ascertained.

16 10. Plaintiff is informed and believes that all named defendants, conspired to commit the acts
17 described herein, or alternatively aided and abetted one another in the performance of the
18 wrongful acts hereinafter complained of.

19 11. Defendants are the owners of the property and operators of the Business called Wilibees Wine
20 & Spirits located in the city of Petaluma, California. This business, including, but not limited
21 to, access aisles and access routes, is or forms a part of a “public accommodation or facility”
22 subject to the requirements of *California Health & Safety Code* §19955, et seq., and of
23 *California Civil Code* §§51, 52(a), 54, 54.1, et seq. On information and belief, this business, or
24 portions of it, was constructed or altered after 1990, and after January 26, 1993, which fact has
25 subjected the business to handicapped access requirements per California Code of Regulations
Title 24 (the State Building Code).

26 12. On or about March 15, 2020, June 12, 2020, July 21, 2020, and September 5, 2020, (the “Visit
27 Dates”), Plaintiff visited the Business for the purpose of buying food and drink. Defendants
28 interfered with Plaintiff’s access to the Business as set forth herein.

1 13. Said acts and omissions denied Plaintiff legal handicapped access to the Business and its
2 facilities as required under state and federal law.

3 14. Plaintiff's home in San Pablo, California is approximately 35 miles from the Business located
4 in the city of Petaluma. Plaintiff travels regularly to and through said city on business and
5 pleasure trips. Plaintiff plans to return to the Business when this public accommodation is
6 made accessible. The Business is on Lakeville Street, a main thoroughfare.

7 15. Plaintiff himself encountered the architectural barriers described herein, and/or is informed
8 and believes that the architectural barriers described herein violate the California Code of
9 Regulations and the Americans with Disabilities Act Guidelines for Buildings and Facilities
10 ("ADAAG") issued by the Department of Justice, and that they existed and continue to exist,
11 and thereby deny Plaintiff and others similarly situated full and equal access to the Business
facilities as set forth herein.

12 16. Defendants, and each of them, by these barriers, discriminated against Plaintiff, on the basis of
13 his physical disability, and interfered with his access to the Business and its facilities, in
14 violation of California law, including but not limited to §§51, 51.5, 54, 54.1, and in violation
15 of Title III, §302, the "Prohibition against Discrimination" provision, and §503, the
16 "Prohibition against Retaliation and Coercion" provision of the Americans with Disabilities
17 Act of 1990.

18 17. As a result of the actions and failure to act of defendants, and each of them, and as a result of
19 the failure to provide proper and accessible entryways, and accessible accommodations for a
20 business such as this, Plaintiff suffered and will suffer the loss of his civil rights to full and
21 equal access to public facilities, and further has suffered in the past and will suffer in the future
22 emotional distress, mental distress, mental suffering, mental anguish, which includes shame,
23 humiliation, embarrassment, anger, chagrin, disappointment and worry, expectedly and
24 naturally associated with a person with a disability being denied access to a public
25 accommodation, all to his damages as prayed hereinafter in an amount within the jurisdiction
of this court.

26 I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS WITH
27 DISABILITIES ACT OF 1990 (42 USC 12101 et seq.)
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1 18. Plaintiff repleads and incorporates by reference, as if fully set forth again herein, the
2 allegations contained in paragraphs 1 to 17 above and incorporates them herein as if separately
3 pled.

4 19. Pursuant to law, in 1990 the United States congress made findings per 42 USC 12101
5 regarding persons with physical disabilities, finding that laws were needed to more fully
6 protect [at that time] 43 million Americans with one or more physical or mental disabilities;
7 [that] historically society has tended to isolate and segregate individuals with disabilities;
8 [that] such forms of discrimination against individuals with disabilities continue to be a serious
9 and pervasive social problem; [that] the nation's proper goals regarding individuals with
10 disabilities are to assure equality of opportunity, full participation, independent living and
11 economic self-sufficiency such individuals; [and that] the continuing existence of unfair and
12 unnecessary discrimination and prejudice denies people with disabilities the opportunity to
13 compete on an equal basis and to pursue those opportunities for which our free society is
justifiably famous.

14 20. Congress stated as its purpose in passing the Americans With Disabilities Act of 1990 (42
15 USC 12102):

16 a. It is the purpose of this act (1) to provide a clear and comprehensive national mandate
17 for the elimination of discrimination against individuals with disabilities; (2) to provide
18 clear, strong, consistent, enforceable standards; (3) to ensure that the Federal
19 Government plays a central role in enforcing the standards established in this Act on
20 behalf of individuals with disabilities; (4) to invoke the sweep of Congressional
21 authority, including the power to enforce the 14th amendment and to regulate
22 commerce, in order to address the major areas of discrimination faced day to day by
people with disabilities.

23 21. As part of the Americans with Disabilities Act of 1990, Congress approved Title III – Public
24 Accommodations and Services Operated by Private Entities (42 USC 12181, et seq.) Among
25 the public accommodations identified under this title were “... a bakery, grocery store,
26 clothing store, hardware store, shopping center, or other sales or rental establishment.”

27 22. Pursuant to 42 USC 12182,

28 a. “No individual shall be discriminated against on the basis of disability in the full and
equal enjoyment of the goods, services, facilities, privileges, advantages or

1 accommodations by any person who owns, leases, (or leases to), or operates a place of
2 public accommodation.”

3 23. Among the general prohibitions against discrimination were included in 42 USC
4 12182(b)(1)(A)(i):

5 a. Denial of Participation. It shall be discriminatory to subject an individual on the basis
6 of a disability or disabilities of such individual or class, directly, or through
7 contractual, licensing, or other arrangements, to a denial of the opportunity of the
8 individual or class to participate in or benefit from the goods, services, facilities,
privileges, advantages, or accommodations of an entity.

9 24. Among the general prohibitions against discrimination were included in 42 USC
10 12182(b)(1)(E):

11 a. Association. It shall be discriminatory to exclude or otherwise deny equal goods,
12 services, facilities, privileges, advantages, accommodations, or other opportunities to
13 an individual or entity because of the known disability of an individual with whom the
14 individual or entity is known to have a relationship or association.

15 25. The acts of Defendants set forth herein were a violation of Plaintiff’s rights under the ADA,
16 and the regulations promulgated thereunder, 28 Code of Federal Regulations Part 36 et seq.

17 26. Among the general prohibits against discrimination were included in 42 USC
18 12182(b)(2)(A)(i) and (ii):

19 a. Discrimination. For purposes of subsection (a), discrimination includes:

20 i. the imposition or application of eligibility criteria that screen out or tend to
21 screen out an individual with a disability or any class of individuals with
22 disabilities from fully and equally enjoying any goods, services, facilities,
privileges, advantages, or accommodations, unless such criteria can be shown
23 to be necessary for the provision of the goods, services, facilities, privileges,
advantages, or accommodations being offered;

24 ii. a failure to make reasonable modifications in policies, practices, or procedures,
25 when such modifications are necessary to afford such goods, services, facilities,
privileges, advantages, or accommodations to individuals with disabilities,
26 unless the entity can demonstrate that making such modifications would
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fundamentally alter the nature of such goods, services, facilities, privileges, advantages, or accommodations.

27. Plaintiff alleges that the facilities, policies, practices and procedure for entry to the Business facility by persons with disabilities and their companions as established and set up by the Defendants can be simply modified to eliminate disparate and discriminatory treatment of persons with disabilities by properly constructing barrier-free handicapped access so as to provide safe, full and equal enjoyment of the Business facilities as is enjoyed by other, non-disabled, people.

28. The specific prohibition against retaliation and coercion is included in the Americans with Disabilities Act of 1990 §503(b) and the Remedies and Procedures in §503(c):

- a. Section 503(b) Interference, Coercion, or Intimidation. - It shall be unlawful to coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by this Act.
- b. Section 503(c) Remedies and Procedure. - The remedies and procedures available under sections 107, 203, and 308 of this Act shall be available to aggrieved persons for violations of subsections (a) and (b), with respect to Title I, Title II and Title III.

29. Among the specific prohibitions against discrimination were included, in 42 USC §12182(b)(2)(a)(iv), "A failure to remove architectural barriers, and communications barriers that are structural in nature, in existing facilities ... where such removal is 3dily achievable and (v) "where and entity can demonstrate that the removal of a barrier under clause (iv) is not readily achievable, a failure to make such goods, services, facilities, privileges, advantages, or accommodations available through such methods are readily achievable." The acts of Defendants set forth herein violated Plaintiffs rights under the "ADA," 42 USC 12181 et seq., and the regulations promulgated thereunder, 28 CFA Part 36, et seq.

30. The removal of the barriers complained of by Plaintiff as hereinabove alleged were at all times after 1990 "readily achievable." On information and belief, if the removal of all the barriers

1 complained of here together were not removable, the removal of each individual barrier
2 complained of herein was "readily achievable."

3 31. Per 42 USC §12181(9), "The term 'readily-achievable' means easily accomplishable and able
4 to be carried out. The statute and attendant regulations define relative 'expense' in relation to
5 the total financial resources of the entities involved, including any 'parent' companies.
6 Plaintiff alleges that properly repairing each of the items that Plaintiff complains of herein is
7 readily achievable, including, but not limited to, correcting and repairing the items set forth in
8 the Paragraphs above. The changes needed to remove barriers to access for the disabled were
9 and are readily achievable by the defendants under standards set forth under 42 USC §12181 of
10 the Americans with Disabilities Act of 1990. (Further, if it were not "readily achievable" for
11 defendants to remove all such barriers, defendants have failed to make the required services
12 available through alternative methods, although such methods are achievable as required by 42
13 USC §12181(b)(2)(a)(iv), v.).

14 32. Pursuant to the Americans with Disabilities Act of 1990, §308 (42 USC §12188 et seq.),
15 Plaintiff is entitled to the remedies and procedures set forth in the Civil Rights Act of 1964
16 §204(a), (42 USC §2000a-3(a)), as Plaintiff is being subjected to discrimination on the basis of
17 disability in violation of this title and/or Plaintiff has reasonable grounds for believing that he
18 is about to be subjected to discrimination in violation of the Americans with Disabilities Act of
19 1990, §302. Plaintiff cannot return to or make use of the subject Business' public facilities
20 complained of herein for the purpose of entry and provision of goods and service so long as
21 Defendants continue to apply eligibility criteria, policies, practices that screen out and refuse
22 to allow entry and service to persons with disabilities such as Plaintiff's.

23 33. Each of Defendants' acts and omissions of failing to provide barrier-free handicapped access
24 for Plaintiff, were tantamount to interference, intimidation, and coercion pursuant to the
25 Americans with Disabilities Act of 1990 §503(b) (now 42 USC §12203): "It shall be unlawful
26 to coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of,
27 or on account of his or her having aided or encouraged any other individual in the exercise or
28 enjoyment of, any right granted or protected by this Act."

1 34. Pursuant to the Americans with Disabilities Act of 1990 §308(a)(1) (now 42 USC §12188),
2 "Nothing in this section shall require a person with a disability to engage in a futile gesture if
3 such person has actual notice that a person or organization covered by this title does not intend
4 to comply with its provisions." Pursuant to this last section, Plaintiff, on information and
5 belief, alleges that defendants have continued to violate the law and deny the rights of Plaintiff
6 and other disabled persons to access this public accommodation for the purpose of shopping.
7 Therefore, Plaintiff seeks injunctive relief pursuant to §308(a)(2) "...Where appropriate,
8 injunctive relief shall also include requiring the provision of an auxiliary aid or service,
9 modifications of a policy, or provision of alternative methods, to the extent required by this
10 title."

11 35. Plaintiff seeks relief pursuant to remedies set forth in §204(a) of the Civil Rights Act of 1964
12 (42 USC §2000a-3(a)), and pursuant to federal regulations adopted to implement the
13 Americans with Disabilities Act of 1990, including, but not limited to, an order granting
14 injunctive relief and attorneys' fees. Such attorneys' fees, "including litigation expenses and
15 costs," are further specifically provided for by §505 of Title III.

16 WHEREFORE, Plaintiff prays for damages as hereinafter stated.

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18 II. SECOND CAUSE OF ACTION: BREACH OF STATUTORY PROTECTIONS FOR
19 PERSONS WITH PHYSICAL DISABILITIES (California Health and Safety Code
20 §19955 et seq.)

21 36. Plaintiff repleads and incorporates by reference, as if fully set forth again herein, the
22 allegations contained in paragraphs 1 to 35 above and incorporates them herein as if separately
23 pled.

24 37. California Health & Safety Code §19955 provides in pertinent part: "The purpose of this part
25 is to insure that public accommodations or facilities constructed in this state with private funds
26 adhere to the provisions of Chapter 7 (commencing with Sec. 4450) of Division 5 of Title 1 of
27 the Government Code. For the purposes of this part "public accommodation or facilities"

1 means a building, structure, facility, complex, or improved area which is used by the general
2 public, and shall include auditoriums, hospitals, theaters, hotels, motels, stadiums, and
3 convention centers. When sanitary facilities are made available for the public, clients or
4 employees in such accommodations or facilities, they shall be made available for the
5 handicapped.

6 38. California Health & Safety Code §19956, which appears in the same chapter as §19955,
7 provides in pertinent part, "accommodations constructed in this state shall conform to the
8 provisions of Chapter 7 (commencing with Section 4450) of Division 5 of Title 1 of the
9 Government Code... ." California Health and Safety Code §19956 was operative July 1, 1970,
10 and is applicable to all public accommodations constructed or altered after that date. On
11 information and belief, portions of the subject Business building and facilities were
12 constructed and/or altered after July 1, 1970, and substantial portions of said building and
13 facilities had alterations, structural repairs, and/or additions made to such public
14 accommodation after July 1, 1970, thereby requiring said public accommodations and/or
15 buildings to be subject to the requirements of Part 5.5, California Health Safety Code §19955,
16 et seq., upon such alteration, structural repairs or additions per California Health and Safety
17 Code §19955.

18 39. Pursuant to authority delegated by the California Government Code, the State Architect
19 promulgated regulations for the enforcement of these Code provisions. Effective January 1,
20 1988, Title 24 of the California Administrative Code adopted the California State Architect's
21 Regulations, and these regulations must be complied with as to any alterations and/or
22 modifications of the Business' facilities after that date. Construction changes occurring prior
23 to this date but after July 1, 1970, triggered access requirements pursuant to the "ASA"
24 requirements, the American Standards Association Specifications, A117.1 -1961. On
25 information and belief, at the time of the construction modification and of the Business'
26 building and facilities, all buildings and facilities covered were required to conform to each of
27 the standards and specifications described in the American Standards Association
28

1 Specifications and/or those contained in Title 24 of the California Administrative Code (now
2 known as Title 24, California Code of Regulations.)

3 40. Public facilities such as the subject Business are public accommodations or facilities within
4 the meaning of California Health and Safety Code §19955.

5 41. It is difficult or impossible for persons with physical disabilities who use wheelchairs, canes,
6 walkers and service animals to travel about in public to use a facility with the defects set forth
7 above as required by Title 24 of the California Code of Regulations and the Americans with
8 Disabilities Act Access Guidelines (ADAAG). Thus, when public accommodations fail to
9 provide handicap accessible public facilities, persons with disabilities are unable to enter and
10 use said facilities, and are denied full and equal access to and use of that facility that is
11 enjoyed by other members of the general public.

12 42. Plaintiff, and other similarly situated persons with physical disabilities whose physical
13 conditions require the use of wheelchairs, canes, walkers and service animals, are unable to
14 use public facilities on a “full and equal” basis unless each such facility is in compliance with
15 the provisions of the California Health & Safety Code §19955, et seq. Plaintiff is a member of
16 that portion of the public whose rights are protected by the provisions of California Health &
17 Safety Code §19955, et seq.

18 43. The California Health and Safety Code was enacted to “ensure that public accommodations
19 and facilities constructed in this state with private funds adhere to the provisions of Chapter 7
20 (commencing with §4450) of Division 5 of Title 1 of the Government Code.” Such “public
21 accommodations” are defined to include facilities like this one.

22 44. Plaintiff is further informed and believes that as of the date of filing this complaint,
23 Defendants have not made accessible the facilities at the Business as set forth above.

24 45. Plaintiff, is informed and believes, and therefore alleges, that Defendants, and each of them,
25 caused the subject buildings and facilities constituting the Business to be constructed, altered
26 and maintained in such a manner that persons with physical disabilities were denied full and
27 equal access to, within and throughout said buildings and were denied full and equal use of
28 said public facilities, and despite knowledge and actual and constructive notice to such

1 Defendants that the configuration of this facility, and/or buildings was in violation of the civil
2 rights of persons with physical disabilities, such as Plaintiff. Such construction, modification,
3 ownership, operation, maintenance and practices of such public facilities are in violation of
4 law as stated in Part 5.5, California Health & Safety Code §19955, et seq., and elsewhere in
5 the laws of California.

6 46. On information and belief, the subject building constituting the public facilities of the Business
7 have denied full and equal access to Plaintiff and other persons with physical disabilities in
8 other respects due to non-compliance with requirements of Title 24 of the California Code of
9 Regulations and the California Health & Safety Code §19955, el seq.

10 47. The basis of Plaintiff's aforementioned information and belief is the various means upon which
11 Defendants must have acquired such knowledge, including, but not limited to, this lawsuit,
12 other access lawsuits, communications with operators of other similar facilities, and other
13 property owners regarding denial access, communications with Plaintiff and other persons
14 with disabilities, communications with other patrons who regularly visit there,
15 communications with owners of other businesses, notices and advisories they obtained from
16 governmental agencies through the mails, at seminars, posted bulletins, television, radio,
17 public service announcements, or upon modification, improvement, alteration or substantial
18 repair of the subject premises and other properties owned by these Defendants, newspaper
19 articles and trade publications regarding the Americans with Disabilities Act of 1990, and
20 other access law, and other similar information. The scope and means of the knowledge of
21 each defendant is within each defendant's exclusive control and cannot be ascertained except
22 through discovery.

23 48. As a result of Defendants' acts and omissions in this regard, Plaintiff has been required to incur
24 legal expenses and hire attorneys in order to enforce his civil rights and enforce provisions of
25 the law protecting access for persons with physical disabilities and prohibiting discrimination
26 against persons with physical disabilities, and to take such action both in his own interests and
27 in order to enforce an important right affecting the public interest. Plaintiff, therefore, seeks
28 damages in this lawsuit for recovery of all reasonable attorneys' fees incurred, pursuant to the

provisions of the California Code of Civil Procedure §1021.5. Plaintiff additionally seeks attorneys' fees pursuant to California Health & Safety Code §19953 and California Civil Code §§54.3.

49. Defendants, and each of them, at times prior to and including the Visit Date, and continuing to the present time, knew that persons with physical disabilities were denied their rights of equal access to all portions of this public facility. Despite such knowledge, Defendants failed and refused to take steps to comply with the applicable handicapped access statutes; and despite knowledge of the resulting problems and denial of civil rights thereby suffered by Plaintiff and other similarly situated persons with disabilities, including the specific notices referred to in this Complaint. Defendants have failed and continue to fail to take action to grant full and equal access to persons with physical disabilities in the respects complained of hereinabove. Defendants and each of them have carried out a course of conduct of refusing to respond to, or correct complaints about, denial of handicap access. Such actions and continuing course of conduct by Defendants, evidence despicable conduct in conscious disregard for the rights or safety of Plaintiff and of other similarly situated persons, justifying an award statutory damages pursuant to California Civil Code §54.

50. Defendants' actions have also been oppressive to persons with physical disabilities and to other members of the public, and have evidenced actual or implied malicious intent towards those members of the public, such as Plaintiff and other persons with physical disabilities who have been denied the proper access they are entitled to by law. Further, Defendants' refusals on a day-to-day basis to correct these problems evidences despicable conduct in conscious disregard for the rights of Plaintiff and other members of the public with physical disabilities.

51. Plaintiff prays for an award of statutory damages against Defendants, and each of them, pursuant to California Civil Code §54.

52. As a result of the actions and failure of Defendants, and each of them, and as a result of the failure to provide proper accessible public facilities, Plaintiff was denied his civil rights, including his right to full and equal access to public facilities, was embarrassed and humiliated, suffered psychological and mental injuries and emotional distress, mental distress,

1 mental suffering, mental anguish, which includes shame, humiliation, embarrassment, anger,
2 chagrin, disappointment and worry, naturally associated with a person with a physical
3 disability being denied access to a public accommodation.

4 WHEREFORE, Plaintiff prays for an injunction under this statute as hereinafter stated.
5

6 **III. THIRD CAUSE OF ACTION: VIOLATION OF CALIFORNIA'S CIVIL RIGHTS
7 ACTS (California Civil Code §§54, 54.1 and 54.3)**

8
9 53. Plaintiff repleads and incorporates by reference, as if fully set forth again herein, the
10 allegations contained in paragraphs 1 to 52 above and incorporates them herein as if separately
11 pled.

12 54. The public facilities above-described constitute public facilities and public accommodations
13 within the meaning of California Health and Safety Code §19955 et seq. and are facilities to
14 which members of the public are invited. The aforementioned acts and omissions of
15 defendants, and each of them, constitute a denial of equal access to and use and enjoyment of
16 these facilities by persons with disabilities, including Plaintiff. Said acts and omissions are
17 also in violation of the provisions of Title 24 of the California Code of Regulations.

18 55. The rights of Plaintiff, the entitlement of Plaintiff to full and equal access, and the denial by
19 defendants of such rights and entitlements are set forth in California Civil Code §§54, 54.1 and
20 54.3, to wit:

21 a. Individuals with disabilities shall have the same right as the ...general public to full and
22 free use of the streets, highways, sidewalks, walkways, public buildings, public
23 facilities, and other public places. (California Civil Code §54(a).)

24 b. Individuals with disabilities shall be entitled to full and equal access, as other members
25 of the general public, to accommodations, advantages, facilities, and privileges of all
26 common carriers, airplanes, motor vehicles, railroad trains, motor buses, streetcars,
27 boats, or any other public conveyances or modes of transportation (whether private,
28 public, franchised, licensed, contracted, or otherwise provided), telephone facilities,

1 adoption agencies, private schools, hotels, lodging places, places of public
2 accommodation, amusement or resort, and other places to which the general public is
3 invited, subject only to the conditions and limitations established by law, or state or
4 federal regulation, and applicable alike to all persons. (California Civil Code §54.1(a).)

5 56. On or about the Visit Dates, Plaintiff suffered violations of California Civil Code §§54 and
6 54.1 in that he was denied full and equal enjoyment of the goods, services, facilities and
7 privileges of the Business as set forth in herein above. Plaintiff was also denied full and equal
8 access to other particulars, including, but not limited to, those described herein above. Plaintiff
9 was also denied use of facilities that he was entitled to under Title III of the Americans with
10 Disabilities Act of 1990.

11 57. As a result of the denial of full and equal enjoyment of the goods, services, facilities and
12 privileges of Defendants' Business due to the acts and omissions of Defendants, and each of
13 them, in owning, operating and maintaining this subject Business as a public facility, Plaintiff
14 has suffered a violation of his civil rights, including, but not limited to, rights under California
15 Civil Code §§54, 54.1, and 54.3, and has suffered and will suffer an injury-in-fact in the form
16 of emotional distress, mental distress, mental suffering, mental anguish, which includes shame,
17 humiliation, embarrassment, anger, chagrin, disappointment and worry, expectedly and
18 naturally associated with a disabled person's denial of full and equal enjoyment of goods,
19 services, and privileges, all to his damages as prayed hereinafter in an amount within the
20 jurisdiction of this court. Defendants' actions and omissions to act constituted discrimination
21 against Plaintiff on the sole basis that Plaintiff is disabled.

22 58. Plaintiff seeks statutory damages for the violation of his rights as a disabled person that
23 occurred on or about the Visit Dates, according to proof, pursuant to California Civil Code
24 §54.

25 59. As a result of Defendants' acts and omissions in this regard, Plaintiff has been required to incur
26 legal expenses and hire attorneys in order to enforce his rights and enforce provisions of the
27 law protecting the full and equal enjoyment of goods, services, facilities, privileges of public
28 facilities by the disabled, and those individuals associated with or accompanied by a person

1 with disabilities, and prohibiting discrimination against the disabled. Plaintiff, therefore, seeks
2 recovery in this lawsuit for all reasonable attorneys' fees incurred pursuant to the provisions of
3 California Civil Code §52. Additionally, Plaintiff's lawsuit is intended not only to obtain
4 compensation for damages to Plaintiff, but also to compel the Defendants to make their goods,
5 services, facilities and privileges available and accessible to all members of the public with
6 physical disabilities, justifying public interest attorneys' fees pursuant to the provisions of
7 California Code of Civil Procedure §1021.5.

8 60. The acts and omissions of Defendants in failing to provide the required accessible facilities
9 subsequent to the enactment date and compliance date of the Americans with Disabilities Act
10 of 1990 and refusal to make remedial alterations to their facilities and other elements as
11 hereinabove stated, after being notified by patrons before and after the time of Plaintiff's visit
12 and injuries, on or about the Visit Dates, and all times prior thereto, with the knowledge that
13 persons with disabilities would enter Defendants' premises, the reason given therefor, was an
14 established policy, practice, and procedure of refusing and denying entry and/or use of
15 facilities, thereby denying services to a person with disabilities and the companions thereor,
16 evidence malice and oppression toward Plaintiff and other disabled persons.

17 61. Defendants have failed to establish a non-discriminatory criteria, policy, practice and
18 procedure for entry into said Business as hereinabove described.

19 62. As a result of defendants' continuing failure to provide for the full and equal enjoyment of
20 goods, services, facilities and privileges of said Business as hereinabove described, Plaintiff
21 has continually been denied his full and equal enjoyment of the subject facilities at the
22 Business, as it would be a "futile gesture to attempt to patronize" said Business with the
23 discriminatory policy in place as hereinabove described.

24 63. The acts and omissions of Defendants as complained of herein in failing to provide the
25 required accessible facilities subsequent to the enactment date and compliance date of the
26 Americans with Disabilities Act of 1990 and refusal to make remedial modifications and
27 alterations to the architectural barriers as stated herein and in failing to establish practices,
28 policies and procedures to allow safe access by persons who are disabled are continuing on a

1 day-to-day basis to have the effect of wrongfully and willfully excluding Plaintiff and other
2 members of the public who are disabled from full and equal enjoyment of the subject Business
3 as hereinabove described. Such acts and omissions are the continuing cause of humiliation and
4 mental and emotional suffering of Plaintiff in that these actions continue to treat Plaintiff as an
5 inferior and second class citizen and serve to discriminate against him on the sole basis that he
6 is disabled. Plaintiff is unable so long as such acts and omissions of defendants continue, to
7 achieve full and equal enjoyment of the goods and services of said Business as described
8 hereinabove. The acts of Defendants have legally caused and will continue to cause irreparable
9 injury to Plaintiff if not enjoined by this court.

10 64. Wherefore, Plaintiff asks this court to preliminarily and permanently any continuing refusal by
11 Defendants to permit entry to said Business and to serve Plaintiff or others similarly situated,
12 and to require Defendants to comply forthwith with the applicable statutory requirements
13 relating to the full and equal enjoyment of goods and services as described hereinabove for
14 disabled persons pursuant to the ADA. Plaintiff further requests that the court award statutory
15 costs and attorneys' fees to Plaintiff pursuant to California Code of Civil Procedure §1021.5, all
16 as hereinafter prayed for.

17
18 WHEREFORE, Plaintiff prays for statutory damages, reasonable attorneys' fees and costs of suit, as
19 allowed by statute and according to proof.

20
21 IV. FOURTH CAUSE OF ACTION: VIOLATION OF CALIFORNIA UNRUH CIVIL
22 RIGHTS ACT (California Civil Code §51 and §51.5.)

23
24 65. Plaintiff repleads and incorporates by reference, as if fully set forth again herein, the
25 allegations contained in paragraphs 1 to 64 above and incorporates them herein as if separately
26 pled.

27 66. Defendant' acts and omissions as specified with regard to the discriminatory treatment of
28 Plaintiff, on the basis of his disabilities, have been in violation of California Civil Code §§51

and 51.5, the Unruh Civil Rights Act, and have denied to Plaintiff his rights to “full and equal accommodations, advantages, facilities, privileges or services in all business establishments of every kind whatsoever.”

67. California Civil Code §51 also provides that “[a] violation of the right of any individual under the Americans with Disabilities Act of 1990 (Public Law 101-336) shall also constitute a violation of this section.”

68. California Civil Code §51.5 also provides that “[no business establishment of any kind whatsoever shall discriminate against, boycott, or blacklist, refuse to buy from, sell to, or trade with any person in this state because of the race, creed, religion, color, national origin, sex, disability of the person or of the person's partners, members, stockholders, directors, officers, managers, superintendents, agents, employees, business associates, suppliers, or customers.”

69. As a result of the violation of Plaintiffs civil rights protected by California Civil Code §§51 and 51.5, Plaintiff is entitled to the rights and remedies of California Civil Code §52, to wit, statutory damages, as well as reasonable attorneys' fees and costs, as allowed by statute, according to proof. California Civil Code §55 is specifically not invoked by plaintiff.

70. Pursuant to California Code of Civil Procedure §425.50: (a) this complaint is filed on behalf of a high-frequency litigant, as defined; (b) 16; (c) shopping on the Lakeville Street corridor of Petaluma, CA; (d) to buy food and drink from this store.

71. WHEREFORE, Plaintiff prays that this court award damages and provide relief as follows:

PRAYER FOR RELIEF

Plaintiff prays that this court award statutory damages and provide relief as follows:

1. Grant injunctive relief requiring that Defendants establish a nondiscriminatory criteria, policy, practice and procedure permitting entry into the subject Business in the City of Petaluma, California, for the purpose of obtaining the goods and services accorded therein according to California Civil Code §§51, 51.5, 52, 54, 54.1, and 54.3, et seq., and Title III of the Americans with Disabilities Act of 1990, and grant injunctive relief requiring that Defendants

1 repair and render safe to disabled persons, and otherwise make accessible, all public areas of the
2 Business' business area, including, but not limited to, each of the barriers to access identified
3 above, and make such facilities "readily accessible to and usable" by individuals with disabilities
4 according to the standards of Title 24 of the California Administrative Code, California Health &
5 Safety Code §19955 et seq., and Title III of the Americans with Disabilities Act of 1990 and the
6 standards of ADAAG; and prohibiting operation of the Business located in the City of Petaluma,
7 California, as a public facility until Defendants provide full and equal enjoyment of goods and
8 services as described hereinabove to disabled persons, including Plaintiff.

- 9 2. Statutory damages, according to proof, pursuant to California Civil Code §52 (minimum
10 statutory damages of \$4,000 per visit x 4 visits, for a total minimum statutory damages of
11 \$16,000), and California Civil Code §54.3.
- 12 3. Prejudgment interest on all statutory damages;
- 13 4. Remedies and Procedures available under Americans with Disabilities Act of 1990, §§I
14 07,203 and 308;
- 15 5. An Injunction under the ADA, and under California Civil Code §52 and §54, and California
16 Health and Safety Code §19953 et seq. to remove the barriers to disabled access;
- 17 6. Award Plaintiff all litigation expenses, all costs of this proceeding and a reasonable
18 attorneys' fees as provided by law, including, but not limited to, those recoverable pursuant
19 to the provisions of California Civil Code §§52, and 54.3, California Code of Civil
20 Procedure §1021.5, and Americans with Disabilities Act of 1990 (42 U.S.C. §12205); and
- 21 7. Grant such other and further relief as the court may deem just and proper.

22
23 /s/ Richard A. Mac Bride

24 Richard A. Mac Bride, Attorney for Plaintiff

25 Date: September 30, 2020

26
27 REQUEST FOR JURY TRIAL
28

1 Plaintiff hereby requests a jury for all claims for which a jury is permitted.

2 /s/ Richard A. Mac Bride

3 Richard A. Mac Bride, Attorney for Plaintiff

4 Date: September 30, 2020

5

6

7 VERIFICATION

8 I, Jose Daniel Castillo-Antonio, plaintiff herein, hereby swear under penalty of perjury under the
9 laws of the State of California as follows: I am familiar with the contents of this complaint and
10 verify that the facts alleged are true and correct according to my personal knowledge, except as to
11 those matters that are pled on information and belief, and as to those matters, I have reason to
12 believe that they are true.

13

14 /s/ Jose Daniel Castillo-Antonio

15 Jose Daniel Castillo-Antonio

16 Date: September 30, 2020